

CHAPTER I INTRODUCTION

1.1 Background

According to Law no. 25 year 1992, Cooperatives are a business entity that has individual members or cooperatives that bear the status of a legal entity in reference to its activity that is based on the principles of a cooperative as well as an economic force of the people based on collectivity¹.

Such foundation is further developed in terms of its scope of work and its function, and according to Nindyo Pramono², a Cooperative is an association or an organized economy that has membership in the form of individuals or entities that allows freedom of entry and exit as a member in accordance to the prevailing rules and regulations, working together in the spirit of family to do business, in an effort to increase the physical welfare of its members. Cooperatives are a form of legal entity as recognized by the Indonesian law. The definition affirms that Cooperatives may consist of individuals³ and entities⁴. The former is known as a Primary Cooperative while the latter is regarded as a Secondary Cooperative.

A Primary Cooperative is a Cooperative that consists solely of individuals. It has at least 20 people that are a part of the Cooperative⁵.

¹ Article 1 v. 1 Undang-Undang no. 25 tahun 1992 tentang Perkoperasian

² Nindyo Pramono, *Beberapa aspek koperasi pada umumnya dan koperasi Indonesia di dalam perkembangan*, Yogyakarta, TPK Gunung Mulia, 1986, pg. 9

³ Article 1 v. 3 Undang-Undang no. 25 tahun 1992 tentang Perkoperasian

⁴ Ibid. v.4

⁵ Ibid. Article 6 v. 1

Individuals are permitted to be members provided that the candidates are every Indonesian citizen that are capable of taking legal action, fulfilling the requirements that have been set in the respective Articles of Association⁶. This gives autonomy to the Cooperative to specifically decide the requirements of a candidate that wishes to register.

A Secondary Cooperative comprises of entities under one Cooperative. It should consist of at least 3 Cooperatives (entity)⁷. Although it occurs often that a Secondary Cooperatives consists of entities, it may also involve individuals which are that of a Primary Cooperative. For the purposes of efficiency, a Cooperative may be established by its similar counterpart or a Cooperative for a different purpose.

Both models of Cooperatives have rights such as forming an Articles of Association (AOA)⁸ which establish the nature of the Cooperative, the rights and obligations of its members, and its day to day operations. To ensure that the AOA is in compliance with national laws, the AOA is subject to approval from the government. It helps the company to be kept in check and ensures that every member receive what they are due. As a result, there are government regulations that further stipulate any matter related. Moreover, since the organizational structure in a Cooperative is not strictly defined, the law provides that the members of a Cooperative are owners as well as users of the Cooperative's services.⁹

⁶ Ibid. Article 18 v. 1

⁷ Ibid. Article 6 v.2

⁸ Anggaran Dasar

⁹ Article 17 v. 1 Undang-Undang no. 25 tahun 1992 tentang Perkoperasian

Every Cooperative acknowledges that membership is based on consent; members are to freely enter and exit the Cooperative as they see themselves fit. Although the number of members are stipulated in the Articles of Association, it does not limit any Indonesian to apply for membership. In many cases the barometer deciding whether a candidate is accepted is decided based on the character that he/she displays.¹⁰ This is to ensure that the candidate is well received by the existing members of the cooperative. This implies that both entrance and exit are the responsibility of each member with its proceedings stipulated in the AOA.

According to William Raiffeisen, the nature of membership is democratic¹¹ in a Cooperative because principally speaking, the members of a Cooperative hold the highest authority, owned by members and managed for fellow members. Democracy plays a big part in shaping the dynamic of the organization because the decisions are called in a Cooperative Members Meeting¹². Such meeting is the foundational block for the life of a Cooperative. With regards to such membership, Raiffeisen also suggests that the scope of a Cooperative's operation is limited to its local area and how well each member knows each other. Operations are not limited internally but may also include other Cooperatives by way of partnership.

¹⁰ Hadhikusuma, RT Sutantya Rahardja. *Hukum Koperasi Indonesia*. Jakarta: PT. RajaGrafindo Persada, 2005

¹¹ Ibid.

¹² Rapat Anggota Koperasi

In order for Cooperatives to carry out their day-to-day operations, they need legal certainty through the rule of law. Such rule of law not only guarantees that cooperatives can carry out their business well but also be protected by the law in terms of obtaining and using the land that they have purchased. The modern day era has seen many people use social media as a place to do business rather than a piece of solid ground. Although it may not seem apparent these days due to the tendency of people finding more jobs through accessing social media in comparison to finding a piece of land to do business, the fact remains that for many businesses land is an important commodity to own because it helps businesses to settle and carry out their day-to-day operations. The use of land as a business commodity also has an effect on land rights; residential houses and home offices have different rights, with the former not being able to make their a place to do business.

The practice of law opens up discrepancies in many forms and impacts. According to R. Abdoel Djamali¹³ there are two components of law namely *das sollen* and *das sein*. The former insists that law is a prescription of a certain outcome that one wishes to obtain. Its latter counterpart points to the actual occurrence as a result of law. As law is prescribed, legal consequences arise. When legal consequences arise, results may tend to drift apart from what the prescribed law ought to achieve.

¹³ Djamali, R. Abdoel. *Pengantar Hukum Indonesia*. 2nd ed. Jakarta: Rajawali Pers, 2012.

In its consideration under Law no. 25 year 1992 concerning Cooperatives, the Cooperative is intended to be an entity that is independent based on its principles in order that it may play a part as a pillar in the national economy. On the same note, the law offers that the establishment of the Cooperative involves the task and responsibility of the government and all citizens. Such economy is maintained on the basis of economic democracy with the principle of togetherness, efficiency, justice, continuity, environmental perspective, as well as balancing progress and the unity of the national economy. The thought conceived behind such establishment is backed by the Constitution, with the thought that the economy is arranged as a collective effort based on family¹⁴ and that the framework may give birth to new branches of production that is important to the state and the service of public interest. Prior to that, Article 28 C, Chapter XA of Human Rights¹⁵ mention that every person reserves the right to self-development through the fulfillment of their basic needs... in order to develop their quality of life and for the sake of the welfare of human beings. Consecutively, every person also possesses the right to make progress for him/herself in maintaining their right collectively to develop their people, nation and state. Following the strict letter of the law, the purpose of a cooperative is to establish itself to be independent and strong in accordance to the principles of a Cooperative so that it becomes a pillar for the national

¹⁴ Art. 33 Bab XIV tentang Perekonomian Nasional dan Kesejahteraan Sosial, Undang Undang Dasar tahun 1945

¹⁵ Ibid.

economy. Be it as a driving force of the citizens' economy or as a legal entity that serves to accommodate a developing society, it is in the best interest of both the government and all citizens to keep in mind collectivity and economic democracy.¹⁶

Suggestively speaking, the collective work of a Cooperative benefits the organization by enabling better prices for goods to be sold and a more affordable supply price that eases sale. Historically, Cooperatives are driven by the working class citizens who are mostly farmers and people who work mostly in collecting raw materials¹⁷. With a Cooperative, each member is able to pitch in what they can offer and distribute what they can give away. For a country like Indonesia that amass a larger working class group than the financially strong, a Cooperative is expected to grow in numbers and thrive in terms of its profits.

¹⁶ Undang-Undang no. 25 tahun 1992 tentang Perkoperasian

¹⁷ Zeuli, Kimberly A., and Robert Cropp. *Cooperatives: Principles and Practices in the 21st Century*. Madison, WI: Cooperative Extension Publishing, 2004.



Fig. 1.1 Comparison of Total Volume of Business and Number of Active Cooperatives in Indonesia between the year 2006 and 2015. (Source:Badan Pusat Statistik)

In the actual practice of cultivating Cooperatives, figures provided by the Badan Pusat Statistik show that the growth of cooperatives would have minor increases and decreases before the year of 2010. After the year of 2010, there has been a steady increase in the net profit of cooperatives. A ‘volume’ in this sense would mean the total worth of assets possessed by the cooperatives that enable them to run their day to day operations. In such context, it indicates the improvement of Indonesian citizens in sustaining their own cooperatives in order to benefit all of their respective members. Such order would not have been created were it not for the enforcement of law that was enacted and intended to further the development of cooperatives. Meanwhile, the number of active cooperatives experiences a gradual increase over the course of the years. Unlike its approximate total volume of business (ATVB), the constant growth indicates the ease of

Indonesians in establishing cooperatives. Such factor can be attributed to the increase of government help in aiding the growth of cooperatives. Out of 150,233 active cooperatives in 2015, the ATVB was around Rp. 266,135,000.

Although the numbers do not tell the whole story, it is a glimpse of the fact that many small economies thrive through the establishment of cooperatives. This is because the nature of cooperatives as explained before involving many small businesses that need to thrive on consumers and the cycle of capital. The history of cooperatives saw that the climate of capitalism was not ideal for small business to thrive on their own, hence seeing it fit to combine several of them into one entity that enabled them to do business but also enhance the welfare of the members that run it. Compared to well-off organizations like corporations that become the main driving force of the Indonesian economy, cooperatives do well to empower the people with the lesser capital. This reflects the initial purpose of the cooperative which is to prioritize promoting the welfare of the citizens and in doing so the members of the cooperative play a part in promoting the welfare of their fellow members as well.

Good as any prospect may be, there will be its shortcomings.¹⁸ Any organization that lacks something is in a good position to innovate. With a

¹⁸ Siwijatmo, JB Djarot. *Koperasi di Indonesia*. Jakarta : Lembaga Penerbit Fakultas Ekonomi, 1982.

cooperative, some points of growth may be of worth to address. Among them are quantity, development, and maintenance.

Speaking in terms of size, the question does not lie in how many cooperatives are present and active, but how many cooperatives it takes to make an effective economy that brings welfare to both members of the public and members of the cooperative. It refers back to the ideal cooperative according to the prevalent laws and regulations. On a basic understanding, the cooperative is an organization that grows among citizens with a social appeal to it. When understood as such, an organization that can be identified as a cooperative is one that made by the people, for the people. Such would be the cooperative that citizens aspire to have. In the Indonesian context, these cooperatives start from small areas and can be said to have a small room for growth. Often times, the economic disparity is too big to bridge. Compared to a corporation that grows in a metropolitan with ever flowing capital, the cooperative is bound to experience financial failure because of the environment that it grows in.

One of the issues that a Cooperative faces is decision making. In accordance with Article 17 v.1 of Law no. 25 year 1992 concerning Cooperatives, the Member of the cooperative is an owner as well as the user of the Cooperative's services. Whereas in a corporation ownership is limited to shareholding and that the power of decision making is (mostly) dependent on the number of shares owned, every member of a Cooperative owns the whole entity regardless of their position in the Cooperative, hence having

an equal vote in the meeting of members. Such decision making, when unauthorized may promote a dispute regarding torts.

According to Rosa Agustina¹⁹, there is a distinction between a breach of contract and a tort. The difference lies between whether or not there is a contractual relationship present. A contractual relationship is an event where two (or more) parties consent to each other and in doing so invokes rights and obligations in an agreement. When one party fails to perform their obligations, the other party has the right to sue the non-performing party for breaching the contract. In its actual application, the final paper will specifically look at the relationship between a member of a cooperative and a public notary²⁰ and the obligations that arise due to their relationship in terms of the sale and purchase of land. This paper will look at both sides of the coin, namely whether the Cooperative can sue the public notary on authorizing the sale and purchase of land between the buyer and the seller, and whether the public notary can be responsible for authorizing the sale and purchase of the land which results in considerable loss for the Cooperative

The idea is further elaborated in the distinction between a breach of contract and a tort. On one hand a breach of contract has a contractual relationship that exists between a party and their counterpart. However on

¹⁹ Agustina, Rosa , Hans Nieuwenhuis, and Jaap Hijma. "Bagian I. Perbuatan Melawan Hukum (Tort Law)." *Hukum Perikatan (Law of Obligations)*, 2012, 3-26. Accessed May 26, 2017.

²⁰ Pejabat Pembuat Akta Tanah

the other hand, a tort arises because one has obligations as commanded by the law, hence most lawsuits that are classified as torts are not founded upon a contractual relationship according to law.²¹ A Cooperative's Article of Association is voluntarily entered by the members and binds them contractually. There are, however obligations arising from law as a result of enforcing Law no. 25 year 1992 concerning Cooperatives.

This final paper will look closely as to whether a Cooperative can make a public notary liable for an unauthorized sale and purchase of the land belonging to the Cooperative. In doing so, the Writer will analyze Court Decision No. 221/PDT.G/2015/PN.JKT.TIM that was adjudicated in the District Court of East Jakarta²². The decision was made on a case of torts between a Cooperative namely Koperasi Sopir Taksi Jakarta Raya, or Kosti Jaya (CLAIMANT) with a public notary named H. Rizul Sudarmadi, SH.M.Kn. (RESPONDENT).

Nanang Suryana and friends (Nanang Suryana) claims to be the head of the members that manage the CLAIMANT sold to a PT. Luhur Satria Sejati Kencana a piece of land as big as 4,993 sqm and possesses the Right to Use Building²³ belonging to CLAIMANT based on the Record of Sale and Purchase (RSP) no. 300/2013 dated 3 April, 2013. The RESPONDENT

²¹ Ibid.

²² Pengadilan Negeri Jakarta Timur

²³ Hak Guna Bangunan

authorized the purchase between Nanang Suryana and PT. Luhur Satria Sejati Kencana.

As the matter went on, it was discovered that the tenure of Nanang Suryana as the head of the members has expired and that he was not authorized to sell the land that belonged to the CLAIMANT. This brought significant loss to the CLAIMANT as the land that was meant to be used as a pool for 500 (five hundred) units of cars loaned to another company, and belonging to the respective taxi drivers, with an estimated loss of Rp. 4,300,000,000 (four billion and three hundred million rupiah) calculated as of the period of filing the lawsuit dated 10 June, 2015.

In short, the judge ruled that both parties lose. The judge revoked the exceptions, or the defenses raised by the RESPONDENT but also declares the charges of the CLAIMANT as inadmissible. The judge deems the CLAIMANT subject to pay the court fees that amount to a total of Rp. 322,000.

Based on the aforementioned matter that has not been discussed thoroughly before as to how it should be resolved, the Writer will raise the issue as a form of research entitled:

**ANALYSIS ON TORT CONDUCTED TOWARDS A
COOPERATIVE ON DECISION NO. 221/PDT.G/2015/PN.JKT.TIM
BASED ON LAW NO.25 YEAR 1992 CONCERNING
COOPERATIVES**

1.2 Formulation of Issue

- 1) In what way can a member of a Cooperative take action toward a tort involving the sale of land with a Right to Use Building done by one of its former managers based on Law no. 25 year 1992 concerning Cooperatives?
- 2) In what way do the elements of tort apply in the sale and purchase of land belonging to a Cooperative based on their ruling of Court Decision No. 221/PDT.G/2015/PN.JKT.TIM?

1.3 Goals of Research

The goals in this final paper are:

- 1) To serve as a means of understanding how a Cooperative can take action toward a tort involving the sale of land with a Right to Use Building.
- 2) To understand how the concept of torts, especially civil torts are being applied in the real world through the analysis of Court Decision No. 221/PDT.G/2015/PN.JKT.TIM.

1.4 Benefit of Research

1) Theoretical Benefit

This final paper gives the chance to discover and apply the theories of law, promoting comprehension in key areas as a result of applying knowledge in exploring the implementation of torts.

2) Practical Benefit

In its practice, the final paper wishes to be a way of discovery into the scope of torts and tort issues. Moreover, it aims to shed light into new

ideas of handling a case regarding torts that are stipulated by Art. 1365 of the Indonesian Civil Code.

1.5 Systematic of Writing

CHAPTER I

: INTRODUCTION

This chapter will be the overview of what will be discussed all throughout the final paper. It contains the background, formulation of issue, goals of research, benefit of research, and the systematic of writing.

CHAPTER II

: LITERATURE APPROACH

This chapter will discover the nature of the premises discussed in the court decision that is brought up in this final paper. The Writer has divided the premises into 3 sub categories which include cooperatives, rights to land, and torts in order to achieve the same understanding between the Writer and the reader.

CHAPTER III

: LEGAL RESEARCH METHOD

This chapter outlines the nature of legal research, types of sources which are divided into 2 sub categories; primary sources and secondary sources, sources of law covered, and scope of research.

CHAPTER IV : RESEARCH RESULTS AND ANALYSIS

This chapter breaks down the Court Decision no. 221/PDT.G/2015/PN.JKT.TIM regarding torts involving the sale of land conducted by a member of the cooperative, and its authorization by a public notary bringing loss toward the cooperative. The Writer will analyze the decision based on the research that they have done.

CHAPTER V : CONCLUSION

This chapter epitomizes everything that has been outlined in the previous chapters. It is a brief summary of this final paper and also answering the formulation of issue as mentioned in Chapter I of this final paper.